7-2700-13138-1

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF REVENUE

In the Matter of Proposed
Permanent Rules Governing
Deed Tax, Minnesota Rules
Parts 8123.0100 and 8123.0200.

REPORT OF THE ADMINISTRATIVE LAW JUDGE

This matter came on for hearing before Administrative Law Judge (ALJ) Richard C. Luis at 9:30 a.m. on November 8, 2000, in the Skjegstad Room, Revenue Building, 600 North Robert Street, St. Paul, Minnesota. The hearing continued until everyone present had an opportunity to state his or her views on the proposed rules.

This Report is part of a rulemaking process governed by the Minnesota Administrative Procedure Act.[1] The legislature has designed the rulemaking process to ensure that state agencies have met all the requirements that Minnesota law specifies for adopting rules. Those requirements include assurances that the proposed rules are necessary and reasonable and that any modifications that the agency may have made after the proposed rules were published initially are not impermissible substantial changes. The rulemaking process also includes a hearing, when a sufficient number of persons request one. The hearing is intended to allow the agency and the Administrative Law Judge reviewing the proposed rules to hear public comment regarding the impact of the proposed rules and what changes might be appropriate.

Patrick J. Finnegan, Attorney, Appeals and Legal Services Division, 600 North Robert Street, Mail Station 2220, St. Paul, Minnesota 55146, appeared as the attorney for the Department of Revenue ("Department"). Lance R. Staricha, Attorney for the Appeals and Legal Services Division of the Department, also appeared to provide the public with information about the proposed rules and to answer any questions. Approximately seventeen members of the public attended the hearing. Ten members of the public signed the hearing register.

After the hearing ended, the record remained open for twenty calendar days, until November 28, 2000, to allow interested persons and the Department an opportunity to submit written comments.[2] During this initial comment period the Administrative Law Judge received two written comments. Following the initial comment period, the record remained open for an additional five business days to allow interested persons and the Department the opportunity to file a written response to the comments submitted. The deadline for response to the comments was December 5, 2000. Only the Department filed a responsive comment. The hearing record closed for all purposes on December 5, 2000.

NOTICE

The Department must make this Report available for review for at least five working days before the Department takes any further action to adopt final rules or to modify or withdraw the proposed rules. During that time, this Report must be made available to interested persons upon request. If the Commissioner of Revenue makes changes in the rules other than those recommended in this Report, he must submit the rules, along with the complete hearing record, to the Chief Administrative Law Judge for a review of those changes before he may adopt the rules in final form.

After adopting the final version of the rules, the Department must submit the rules to the Revisor of Statutes for a review of their form. After the Revisor of Statutes approves the form of the rules, the rules must be filed with the Secretary of State. On the day of that filing, the Department must give notice to everyone who requested notice of that filing.

Based upon all the testimony, exhibits, and written comments, the Administrative Law Judge makes the following:

FINDINGS OF FACT

Procedural Requirements

1. On September 20, 1999, the Department published a Request for Comments on Planned Rules Governing Deed Tax at 24 State Register 399.[3]

2. On August 24, 2000, the Department requested that a hearing be scheduled and filed the following documents with the Chief Administrative Law Judge:

a. A copy of the proposed rules certified as to form by the Revisor of Statutes;

b. The Statement of Need and Reasonableness (SONAR);

c. The Dual Notice proposed to be published; and

d. The Department's request for prior approval of its Notice Plan for giving Dual Notice.

3. Administrative Law Judge Richard C. Luis approved the Department's Notice Plan on August 31, 2000.

4. The Department mailed the Dual Notice of Hearing to all persons and associations who had registered their names with the agency for the purpose of receiving such notice.[4] The Dual Notice of Hearing was also mailed to all County Treasurers, the authors of the original legislation, and real estate and banker's associations.[5]

5. The Dual Notice of Hearing was published on September 18, 2000, at 25 State Register 698.[6] The Dual Notice was also posted on the Department's web page.[7]

6. The Department received twenty-five timely comments and over twenty-five requests for a hearing on this matter.[8]

7. On October 20, 2000, the Department mailed a notice to all persons who requested a hearing, notifying them that a hearing would be held.[9]

8. On the day of the hearing, the Department placed the following documents into the record:

a. The Request for Comments as published in the *State Register.*[10]

b. The proposed rules as certified by the Revisor of Statutes.

c. The SONAR.

d. Certification of mailing a copy of Statement of Need and Reasonableness to Legislative Reference Library on August 31, 2000.

e. The Dual Notice of Hearing as mailed and published in the *State Register*.

f. Certificate of the Agency Mailing List, current as of September 14, 2000, with a copy of the list attached.

g. Certificate of mailing the Dual Notice of Hearing to the Agency Mailing List.

h. Certification of mailing the Dual Notice of Hearing to the chairs of various legislative committees and authors of legislation.

i. The comments received in response to the Dual Notice of Hearing.

j. Certificate of Mailing the Notice of Hearing to those persons who requested a hearing.

k. An amendment to the proposed rule made after the proposed rule was published in the *State Register*.

l. The text of the statement made by the Department's attorney at the rulemaking hearing.

9. The Department has met all of the procedural requirements under the applicable statutes and rules.

Background and Nature of the Proposed Rules

10. The Department is proposing these rules to aid in the implementation of the deed tax. The deed tax is imposed by Minn. Stat. Chap. 287 on any instrument that transfers the ownership of real property.[11] The tax imposed on such transactions is calculated by the value of the property. The tax is $1.65 on property worth up to $500.00 and an additional $1.65 for each additional $500.00 of value (or fraction thereof).[12] The proposed rules define terms, address issues regarding the imposition of the tax, and provide examples of how the tax provisions apply to specific transactions.[13]

Statutory Authority

11. The Department identified its general rulemaking authority, Minn. Stat. § 270.06(14), as authorizing the adoption of these rules.[14] In addition, the Department identified Minn. Stat. § 287.20, subd. 2(d), which states:

> (d) When a conveyance of real property is made pursuant to a contract for deed, the consideration is the price for the real property reflected in the contract; except that, subject to the limitations under section 287.221, when the conveyance is made by a person engaged in the business of land sales or construction of buildings and other improvements, or by an affiliated person, then the consideration is the amount paid for the land and the improvements. **By January 1, 2001, the commissioner shall adopt rules that define the phrases "engaged in the business of land sales or construction of buildings and other improvements" and "affiliated person" as those phrases are used in this paragraph.** (emphasis added)

12. The Administrative Law Judge finds that the Department has the statutory authority to adopt the proposed rules, under Minn. Stat. §§ 270.06(14) and 287.20, subd. 2(d).

Rulemaking Legal Standards

13. Under Minnesota law,[15] one of the determinations that must be made in a rulemaking proceeding is whether the agency has established the need for and reasonableness of the proposed rules by an affirmative presentation of facts. In support of a rule, an agency may rely on legislative facts, namely general facts concerning questions of law, policy and discretion, or it may simply rely on interpretation of a statute or stated policy preferences.[16] The Department prepared a SONAR in support of its proposed rules. At the hearing, the Department relied upon the SONAR as its affirmative presentation of need and reasonableness for the proposed amendments. The SONAR was supplemented by comments made by Department staff and panel members at the public hearing, and by the Department's written post-hearing comments.

14. The question of whether a rule has been shown to be reasonable focuses on whether it has been shown to have a rational basis, or whether it is arbitrary, based upon the rulemaking record. Minnesota case law has equated an unreasonable rule with an arbitrary rule.[17] Arbitrary or unreasonable agency action is action without consideration and in disregard of the facts and circumstances of the case.[18] A rule is generally found to be reasonable if it is rationally related to the end sought to be achieved by the governing statute.[19] The Minnesota Supreme Court has further defined an agency's burden in adopting rules by requiring it to "explain on what evidence it is relying and how the evidence connects rationally with the agency's choice of action to be taken."[20]

15. Reasonable minds might be divided about the wisdom of a certain course of action. An agency is entitled to make choices between possible approaches so long as its choice is rational. Generally, it is not the proper role of the Administrative Law Judge to determine which policy alternative presents the "best" approach since this would invade the policy-making discretion of the agency. The question is, rather, whether the choice made by the agency is one that a rational person could have made.[21]

16. In addition to need and reasonableness, the Administrative Law Judge must also assess whether the rule adoption procedure was complied with, whether the rule grants undue discretion, whether an agency has statutory authority to adopt the rule, whether the rule is unconstitutional or illegal, whether the rule constitutes an undue delegation of authority to another entity, or whether the proposed language is not a rule.[22]

Impact on Farming Operations

17. Minnesota Statutes, section 14.111, imposes an additional notice requirement when rules are adopted that affect farming operations. In essence, the statute requires that an agency must provide a copy of any such proposed rule change to the Commissioner of Agriculture at least thirty days prior to publishing the proposed rule in the State Register.

18. The proposed rules do not impose restrictions or have a direct impact on fundamental aspects of farming operations. The Administrative Law Judge finds that the proposed rule change will not affect farming operations in Minnesota, and thus finds that no additional notice is required.

Statutory Requirements for the SONAR

Cost and Alternative Assessments in the SONAR

19. Minn. Stat. § 14.131 requires an agency adopting a rule to include in its SONAR:

> (1) a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the

costs of the proposed rule and classes that will benefit from the proposed rule;

(2) the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues;

(3) a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;

(4) a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule;

(5) the probable costs of complying with the proposed rule; and

(6) an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference.

20. The Department indicated that the proposed rules will affect real estate developers and builders, attorneys representing those persons, providers of real estate escrow and closing services, and county officials involved in real estate transactions and tax collection.[23] No additional burden of documentation is imposed by the proposed rule. The chief benefit of the rules was described as the "clearer idea of how the deed tax applies to real estate sold by contract for deed; specifically in those situations when there are improvements added during the term of the contract."[24]

21. No additional costs were identified as being imposed by the proposed rule. The Department noted that the anticipated effect on local officials would be to reduce confusion and thereby reduce costs.[25] The level of state tax revenue collected was estimated to remain the same.[26]

22. Marie Kunze, Manager of the Property Tax Division for the Hennepin County Taxpayer Services Department, and Luci R. Botzek, Administrator/Legislative Counsel for the Minnesota Association of County Officers (MACO), expressed concern that administrative problems would arise, particularly if the deeds to be recorded were delivered by mail.[27] In such instances, County employees may need to contact the buyer if the proper tax payment is not made. Kunze suggested that the Certificate of Real Estate Value (CRV)[28] be changed to alert the parties to their obligations under the deed tax statute and rule. The Department indicated that revising the CRV is a possibility that will be explored.[29] The Department also noted that training is offered to county employees on how to comply with the deed tax statute and rules.[30]

23. The Department considered four other alternatives in arriving at the proposed rules.[31] Two of the options involved shifting the responsibility for the deed tax to the buyer (rather than the seller) in contract for deed sales. Another option was to

impose the tax on the contract for deed, rather than the deed. The fourth option was to render both the buyer and seller jointly liable for the tax and require the Department to determine who must pay the tax. The Department rejected all of these alternatives because the administration of the tax would be rendered more complicated.[32]

24. The Department noted that there are "no directly applicable federal laws or regulations."[33] The history of the federal deed tax, which was repealed in 1966, was included for comparison. The Administrative Law Judge concludes that the Department has met the requirements set forth in Minn. Stat. § 14.131 for assessing costs imposed by and alternatives to the rules as proposed.

Performance-Based Regulation

25. Minnesota Statutes, section 14.131, requires that an agency include in its SONAR a description of how it "considered and implemented the legislative policy supporting performance-based regulatory systems set forth in section 14.002." Section 14.002 states, in relevant part, that "whenever feasible, state agencies must develop rules and regulatory programs that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals." The Department performed the required analysis by assessing how the rules fit in the Department's strategic plan.[34]

26. The Administrative Law Judge concludes that the Department has met the requirements set forth in Minn. Stat. § 14.131 for assessing the impact of the proposed rules, including consideration and implementation of the legislative policy supporting performance-based regulatory systems.

27. This Report is limited to the discussion of the portions of the proposed rules that received critical comment or otherwise need to be examined, and it will not discuss each comment or rule part. Persons or groups who do not find their particular comments referenced in this Report should know that each and every suggestion including those made prior to the hearing, has been carefully read and considered. Moreover, because some sections of the proposed rules were not opposed and were adequately supported by the SONAR, a detailed discussion of each section of the proposed rules is unnecessary. The Administrative Law Judge specifically finds that the Department has demonstrated the need for and reasonableness of all rule provisions not specifically discussed in this Report by an affirmative presentation of facts. The Administrative Law Judge also finds that all provisions not specifically discussed are authorized by statute and there are no other problems that would prevent the adoption of those rules, as proposed.

Proposed Rule 8123.0100 – Scope; Definitions

Subpart 2 - Affiliated Person

28. Subpart 2 of proposed rule 8123.0100 defines the term "affiliated person" as being a "related party," "legal representative," or "controlled group." Each of these terms is defined in items A-C of subpart 2. The Department cited Minn. Stat. § 287.20,

subd. 2(d) as requiring the adoption of a definition for the term "affiliated person".[35] MACO expressed concern that defining "affiliated person" would extend the deed tax to transactions, particularly amongst family members, that should not be taxed in that manner. At the hearing, MACO posed the hypothetical transaction of a grandmother transferring four parcels of land, one to each of her children as the sort of situation that was not intended to fall under the deed tax provision. The Department responded that persons are unlikely to be surprised by the tax provisions. Further, the statutory provision and these rules will only cause an unusual taxable event when the land is transferred pursuant to a contract for deed and improvements are added to the property. These circumstances are much less likely in the intrafamilial land transfer hypothetical posed by MACO unless tax avoidance is the motive. The Department described the definition proposed for "affiliated person" as needed to identify relationships whereby transactions by one person can properly be attributed to another, who will be responsible ultimately for payment of a deed tax.[36] Of course, a definition of "affiliated person" is also required specifically by the authorizing statute.[37] The reasonableness of the proposed definition can only be determined by assessing the individual items of subpart 2.

Item A - Related Party

29. Item A defines a "related party" as the spouse of a person in the business of land sales or construction, or the child, parent or sibling (or their spouses) of such a person. The Department relies upon a presumption common in the area of taxation, that is, that persons within a family and those related by marriage are likely to engage in transactions that are not at arms length.[38] The Department notes that the degree of relationship used in the proposed rule is less extensive than the degree used in the Internal Revenue Code.[39] The Department expressed a belief that the likelihood of transactions being used for tax avoidance is unlikely to occur outside the scope of the relationships identified.[40] No commentators objected to the proposed rule. Item A is found to be needed and reasonable.

Item B - Legal Representative

30. Item B defines "legal representative" as a "person empowered to act for a person" for whom the deed tax requirements would apply. The Department provided additional clarification by indicating that "legal representative includes, but is not limited to:" followed by a list of persons commonly holding the status of legal representative. No commentator objected to any of the categories listed. Concern was expressed at the hearing that using the words "includes, but is not limited to" created a noninclusive list of classes defined as being legal representatives independent of the initial definition. The rule fails to list all the classes that meet the definition and this creates vagueness in how the rule could be applied. In its November 28 filing, the Department addressed this concern by replacing the language published originally with "The following are deemed to meet the definition of legal representative:" and using the list of categories that was proposed originally. The new language serves to clarify the overall definition of "legal representative" in item B and does not result in any vagueness as to who falls within the definition. Item B is found to be needed and reasonable as

modified. The new language was discussed at the hearing and is found not to constitute a substantial change.

Item C - Controlled Group

31. Item C defines "controlled group" for the purpose of determining if an entity constitutes an "affiliated person." The Department relied upon the "commonly accepted notion that the actions of a controlled entity are attributable to the one in control."[41] The measure of control set forth in item C is more than a fifty percent ownership in stock or other measure of value by a person for whom the deed tax requirements would apply. The ownership of a controlled group may be direct or indirect. Direct ownership is ownership by the person. Indirect ownership can be through another controlled group or by a legal representative or family member. The Department has demonstrated the need for preventing transactions from being structured to avoid taxation. The proposed rule language is found to be reasonable to prevent using controlled groups to avoid the imposition of the deed tax.

Subpart 3 - Engaged in the Business of Construction of Buildings and Other Improvements

32. Subpart 3 defines "engaged in the business of construction of buildings and other improvements" for the purpose of these rules as being in the business of building or improving real property or contracting to do so. The subpart also identifies persons licensed under Minn. Stat. Chap. 326 as residential building contractors and remodelers as meeting the definition in subpart 3. No commentator indicated that the definition was too broad or difficult to understand. Subpart 3 is found to be needed and reasonable as proposed.

Subpart 4 - Engaged in the Business of Land Sales

33. Subpart 4 defines "engaged in the business of land sales" for the purpose of these rules. The Department originally proposed including persons selling land in the ordinary course of business and persons who transferred more than three lots within a five-year period. To develop its proposal, the Department considered Section 1237 of the Internal Revenue Code, which is not a deed tax provision but does distinguish between persons selling land in the ordinary course of business and persons selling land to liquidate investments.[42] Section 1237 treats a land sale as being in the ordinary course of business if the sale is more than the fifth one, from the same tract, within the last five years. Proposed subpart 3 triggers a taxable event after the third such sale, conveyance, or exchange, and the lots or parcels sold do not have to be in the same tract. The standard in subpart 3 is found to be reasonable, because it is consistent with a purpose of the statutory deed tax structure, which is to impose deed tax liability for improvements on those who sell land routinely.

34. At the hearing, the Department submitted additional language, for addition at the end of the subpart as published originally, clarifying first that the sale

occurs at the earlier of the execution of the contract for deed or the transfer of the deed.[43] The second portion of the proposed language reads:

> (B) a person who sells, conveys, or exchanges more than three parcels or lots of real estate within a five-year period is not engaged in the business of land sales with regard to the first three sales, conveyances or exchanges within that period.

35. The new language was discussed at the hearing. The new language as proposed creates an exemption for all sellers of real estate for the first three sales. This was not the Department's intent. Rather, the Department intended to structure the definition of "engaged in the business of land sales" to become effective on the fourth transaction for persons who are included only by the number of sales, not for persons who are engaged in land transactions in the ordinary course of business.

36. To effectuate its intent, the Department proposed new language for this subpart in its posthearing comment. Subpart 4, with the newly proposed language, states:

> "Engaged in the business of land sales" means a person who sells, conveys, or exchanges real property in the ordinary course of a trade or business; or, a person who sells, conveys, or exchanges more than three real property parcels or lots within any five-year period in the same county. For the purpose of this subpart, (A) a sale, conveyance or exchange of a parcel or lot occurs at the earlier of when the grantor executes and delivers a contract for deed for its sale or when the grantor executes and delivers a deed for its conveyance or exchange; and (B) a person, other than a person who sells, conveys, or exchanges real property in the ordinary course of a trade or business, is not engaged in the business of land sales until after they sell, convey, or exchange three parcels or lots of real estate within a five-year period within the same county.

37. The newly proposed language clarifies that persons who are engaged in the business of land sales are subject to the deed tax for each transaction. For persons not conducting land sales in the ordinary course of business, they will be subject to the deed tax only upon reaching the threshold of transferring the fourth parcel in the same county within a five-year period. The newly proposed language clarifies the proposed rule and is found to be necessary and reasonable to define the concept of "engaged in the business of land sales."

38. Minn. Rule 8123.0100, subp. 4, as finally proposed, is found to be necessary and reasonable. The new language is found not to be substantially different from the language as published in the *State Register*.

Proposed Rule 8123.0200 – Determination of Tax

39. Proposed rule 8123.0200 sets out the methods for calculating the amount of deed tax that should be paid in the variety of transactions that can occur when a contract for deed is used to effectuate the sale of real property. David J. Meyers, representing the Builder's Association of Minnesota (BAM), objected to the adoption of the proposed rules as unnecessary. The Department responded that the application of the tax currently lacks consistency and "audits have revealed patterns of tax avoidance by some developers and builders."[44] This is a sufficient showing of need for adopting rules governing how the deed tax is determined.

40. BAM suggested that the term "consideration" should be defined in the proposed rules. MACO suggested that the use of the term "consideration" in subpart 1 resulted in overbroad inclusion of value that results in a higher tax obligation than is warranted. The Department responded that the rule language follows the language of Minn. Stat. § 287.21, subd. 2(a).[45] The impact of changing the meaning of consideration as used in the rule was described as a loss of revenue "as high as $10 million a year."[46] The term is explicitly defined for contracts for deed in Minn. Stat. § 287.20, subd. 2(d). The Department cannot adopt a rule that is inconsistent with a statute. Using the term "consideration" does not constitute a defect in the proposed rule.

41. BAM objected to the lack of a definition to the word "improvement" in subpart 1. The Department indicated that the term has a plain meaning in the real estate context.[47] An attempt to define, or make specific by example the term "improvement" could result in excluding the value of any non-specified, unlisted, or "undefined" improvements from deed tax liability. Such an unintended "exemption by exclusion" would be a result contrary to the statutory purpose of including the value of improvements in the computation of deed tax liability under Minn. Stat. § 287.20, subd. 2(d). The Department cannot achieve the end sought by BAM before the statute is amended to exclude all (or certain specified) improvements from the required computation of the tax that must be paid.

42. The Department intended to structure subpart 1 by stating the general rule and then list exemptions. The word chosen for starting proposed subpart 1 is "Generally." At the hearing in this matter it was pointed out that the effect of that word was to render the first portion of the subpart to be a guideline, not a rule. The Department replaced that word with "Except as noted below." The new language is found to be needed and reasonable to set forth the general rule regarding deed tax calculation and that other situations exist. Those situations are governed by specific rule language. The new language is found to be not substantially different from language as published in the *State Register*.

43. Subpart 2 sets the standard to be used by the Commissioner of Revenue in determining whether any particular real estate transaction is part of a land sale or construction business. As originally proposed, the Commissioner was to base the decision on "all of the relevant facts and circumstances." Concern was expressed at the hearing that the standard was insufficiently clear to adequately limit the Commissioner's discretion in applying the rule. In response to that concern, the

Department indicated that the usual standard of review was to consider each transaction on its own merits. The Department modified subpart 2 in its November 28 filing, to state:

> The commissioner shall base the determination of whether or not a particular conveyance is part of a land sales or construction business primarily on bookkeeping entries and tax returns, but also taking into account all of the relevant factors and circumstances.

44. The newly proposed language clarifies that the form of the transaction will be the foremost consideration, but that the Commissioner can exercise discretion in considering other related information concerning the transaction. The limitation of the further consideration to "relevant factors and circumstances," while broad, is sufficiently clear to provide a standard of review. Subpart 2 is found to be necessary and reasonable as modified. It is found also that the new proposed language for subpart 2 is not substantially different from language as published in the *State Register*.

45. Subpart 3 sets out examples of how the tax calculation is performed and who must pay the tax. While examples are not rules, the Department must commonly describe the impact of its rules in the form of "real world" applications. Due to the unique nature of tax rules, examples included in the rules themselves have been approved in rulemaking proceedings.[48] The examples set out in subpart 3 are found to be needed and reasonable.

Based on the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The Minnesota Department of Revenue gave proper notice in this matter.

2. The Department has fulfilled the procedural requirements of Minn. Stat. § 14.14, and all other procedural requirements of law or rule.

3. The Department has demonstrated its statutory authority to adopt the proposed rules, and has fulfilled all other substantive requirements of law or rule within the meaning of Minn. Stat. §§ 14.05, subd. 1; and 14.50 (i) and (ii).

4. The Department has demonstrated the need for and reasonableness of the proposed rules by an affirmative presentation of facts in the record within the meaning of Minn. Stat. §§ 14.131, 14.14, subd. 2; and 14.50 (iii).

5. Any Findings that might properly be termed Conclusions are hereby adopted as such.

6. A Finding or Conclusion of need and reasonableness with regard to any particular rule subsection does not preclude and should not discourage the Department

from further modification of the proposed rules based upon this Report and an examination of the public comments, provided that the rule finally adopted is based upon facts as appearing in this rule hearing record.

Based upon the foregoing Conclusions, the Administrative Law Judge makes the following:

RECOMMENDATION

IT IS RECOMMENDED that the proposed rules be adopted in accordance with the Findings and Conclusions herein.

Dated this 20th day of December 2000.

/s/
RICHARD C. LUIS
Administrative Law Judge

Recorded: Taped.
No Transcript Prepared.

---

[1] Minn. Stat. §§ 14.131 through 14.20 (2000). (Unless otherwise stated, all further references to Minnesota Statutes are to the 2000 version.)
[2] Minn. Stat. § 14.15, subd. 1.
[3] Department Exhibit 1.
[4] Exhibit 7.
[5] Exhibit 7.
[6] Exhibit 5b.
[7] The location of the document is http://www.taxes.state.mn.us/laws/rules/8123.html.
[8] Exhibit 9.
[9] Exhibit 10.
[10] The order of the exhibit list in this Finding follows the same order as the numbering of the documents in the record (*e.g.* a = 1).
[11] Minn. Stat. § 287.21, subd. 1.
[12] Minn. Stat. § 287.21, subd. 2.
[13] Exhibit 3.
[14] Exhibit 3, at 2.
[15] Minn. Stat. § 14.14, subd. 2; Minn. R. part 1400.2100.
[16] ***Mammenga v. Department of Human Services***, 442 N.W.2d 786 (Minn. 1989); ***Manufactured Hous. Inst. v. Pettersen***, 347 N.W.2d 238, 244 (Minn. 1984).
[17] ***In re Hanson***, 275 N.W.2d 790 (Minn. 1978); ***Hurley v. Chaffee***, 231 Minn. 362, 43 N.W.2d 281, 284 (1950).
[18] ***Greenhill v. Bailey***, 519 F.2d 5, 19 (8th Cir. 1975).
[19] ***Mammenga***, 442 N.W.2d at 789-90; ***Broen Mem'l Home v. Minnesota Dep't of Human Services***, 364 N.W.2d 436, 444 (Minn. Ct. App. 1985).
[20] ***Manufactured Hous. Inst. v. Pettersen***, 347 N.W.2d at 244.
[21] ***Federal Sec. Adm'r v. Quaker Oats Co***., 318 U.S. 218, 233 (1943).
[22] Minn. R. part 1400.2100.
[23] Exhibit 3, at 2.
[24] Exhibit 3, at 2.
[25] *Id*., at 3.

[26] *Id*.
[27] Kunze Letter (November 27, 2000), Botzek Letter (November 28, 2000).
[28] The CRV is currently required of persons seeking to record transfers of property under Minn. Stat. § 272.115.
[29] Department Reply.
[30] Department Comment, at 4.
[31] Exhibit 3, at 3.
[32] *Id*.
[33] Exhibit 3, at 4.
[34] Exhibit 3, at 4.
[35] Exhibit 3, at 5.
[36] Exhibit 3, at 5.
[37] Minn. Stat. § 287.20, subd. 2(d).
[38] Exhibit 3, at 6.
[39] *Id*.
[40] *Id*.
[41] Exhibit 3, at 7.
[42] Exhibit 3, at 7.
[43] Exhibit 11.
[44] Department Comment, at 8.
[45] Department Comment, at 5.
[46] *Id*. at 5-6.
[47] Department Comment, at 2.
[48] ***In the Matter of Proposed Adoption of the Rule Relating to Sales and Use Tax on Capital Equipment and Replacement Capital Equipment, Minnesota Rules, Part 8130.2200***, OAH Docket No. 6-2700-9730-1 (ALJ Report issued September 1995).